



**US Army Corps
Of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: July 3, 2008
Comment Deadline: August 1, 2008
Corps Action ID #: SAW-2008-1702

The Wilmington District, Corps of Engineers (Corps) has received an application from Mr. Ken Porter-Shirley of Odin Investments, LLC, seeking Department of the Army (DA) authorization to impact 1,775 linear feet of stream channel and 0.01 ac. of wetlands associated with the development of an approximately 22 acre mixed use subdivision known as Cedar Pointe Crossing, southeast of Asheville in Buncombe County, North Carolina.

Specific plans and location information are described below and shown on the attached plans. This Public Notice and all attached plans are also available on the Wilmington District Web Site at www.saw.usace.army.mil/wetlands

Applicant: Mr. Ken Porter-Shirley
Odin Investments, LLC
32 Orange Street
Asheville, North Carolina 28801

AGENT (if applicable): Clement Riddle
ClearWater Environmental Consultants, Inc.
718 Oakland Street
Hendersonville, NC 28792

Authority

The Corps will evaluate this application and decide whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of Section 404 of the Clean Water Act.

Location

The Cedar Pointe Crossing subdivision is proposed for an approximately 22 acre tract located off the south side of US Highway 74A approximately 2 miles of I-240 East, southeast of Asheville in Buncombe County, North Carolina. The site is directly across from Cliffview Drive and adjacent to the Village Park subdivision.
Lat. 35.547728N, Long. 82.467108W.

Existing Site Conditions

The project site consists of wooded land, a road right-of-way, and a sewer line right-of-way. There is one gravel drive, which provides access to the site. Elevations range from approximately 2,240 feet above mean sea level (MSL) on the northeastern portion of the property within the Gashes Creek floodplain to 2,320 feet above MSL on the southern portion of the property. Soils on site include Tate-loam and Evard-Cowee complex. According to the applicant's consultant, eight natural community types were identified on the property: disturbed roadside, sewer line right-of-way, red oak-hickory forest, pine-oak heath, clear-cut, riparian forest, perennial streams, and wetlands. The following is a summary of each of the eight habitat types identified on site.

Disturbed Roadside: This habitat is adjacent to US Highway 74A and is maintained by seasonal mowing. The vegetation within this habitat type is dominated by fescue grass (*Festuca sp*) and broom sedge (*Andropogon virginicus*). Margins of this habitat also contain shrubs such as blackberry (*Rubus spp*) and sumac (*Rhus spp*); and invasive shrubs such as honeysuckle (*Lonicera japonica*), privet (*Ligustrum sinense*), and rose (*Rosa multiflora*).

Sewer Line Right-of-Way: This habitat has been created by clearing all vegetation associated with red oak-hickory and pine-oak heath communities. It exists as a flat, compressed, graded zone that is maintained with herbaceous vegetation.

Red Oak-Hickory Forest: This habitat is defined as sites with dry to mesic slopes and partly sheltered ridgetops. Ages of trees vary from 30-75 years; the habitat has been selectively logged recently. The mesic community is composed of oak (*Quercus spp*) and hickory (*Carya spp*) species that are less than 50 years old. Sapling conifers were observed in sunny patches and include white pine (*Pinus strobus*), Virginia pine (*Pinus virginiana*), and Canadian hemlock (*Tsuga Canadensis*). Dominant oaks observed include red oak (*Quercus rubra*), southern red oak (*Quercus falcate*), black oak (*Quercus velutina*), white oak (*Quercus alba*), and chestnut oak (*Quercus prinus*). Other tree species observed include mockernut hickory (*Carya tomentosa*), tulip poplar (*Liriodendron tulipifera*), dogwood (*Cornus florida*), beech (*Fagus grandiflora*), and sourwood (*Oxydendrum arboreum*). Shrubs observed include scattered American holly (*Ilex opaca*), maple-leaf viburnum (*Viburnum acerifolium*), mountain laurel (*Kalmia latifolia*), wild hydrangea (*Hydrangea arborescens*), and strawberry bush (*Euonymous americanus*). Scattered herbaceous species included Christmas fern (*Polystichum acrostichoides*) and blackberry. This habitat is the dominant community type on the property. Clear cutting and thinning has taken place in this habitat over the past 1-5 years.

Pine-Oak Heath: This xeric community is found along ridges between the topographic draws of the main slope, with sections along the central eastern and central western sections of the property. Approximate tree age is less than 50 years. This habitat has been selectively logged recently. Trees observed include black oak, red oak, southern red oak, white pine, and Virginia pine. The shrub layer is dominated by mountain laurel interspersed with smaller patches of rosebay (*Rhododendron maximum*), blueberry (*Vaccinium spp*), and huckleberries (*Gaylussacia spp*). The herbaceous layer is composed of brackenfern (*Pteridium aquilinum*) and

various asters (*Aster spp*), such as ragwort (*Senecio spp*). Clear cutting and thinning has taken place in this habitat over the past 1-5 years.

Clear-Cut: This habitat was created through cutting of the red oak-hickory and pine-oak heath canopy. It is composed of mixed conifers, hardwoods, and hardwood shrubs. Tree species observed include white pine, tulip poplar, red maple (*Acer rubrum*), oaks, and mountain laurel. Invasive species such as Japanese honeysuckle, silverberry (*Elaeagnus umbellata*), privet, and rose are patchy but dense. Species observed in the shrub layer include dog hobble (*Leucothoe axillaris*), goldenrods (*Solidago spp*), and blackberry. The shrub layer in some of these areas is very dense.

Riparian Forest: This habitat is varied and often contains mesophytic and hydrophytic species. Communities include tributaries in the bases of coves or at the toes of the slopes. Tree species observed along the stream banks include Canadian hemlock, red maple, and tulip poplar. Shrubs observed in this habitat include rhododendron, pepperbush (*Clethra acuminata*), and spicebush (*Lindera benzoin*). Species observed in the herbaceous layer include Christmas fern and goldenrods.

Perennial Streams: Freshwater habitats include the streambeds and banks of Gashes Creek and unnamed tributaries. There are approximately 3,601 linear feet of stream channel within the project boundary. In general, the unnamed tributaries flow south to north and eventually into Gashes Creek. Gashes Creek flows west to east and eventually into the Swannanoa River. Streams and wetlands within the northern and central portion of the property are bordered by riparian and red oak-hickory forests. A sewer line runs parallel to Gashes Creek and crosses Gashes Creek on the western portion of the property. Stream channels and wetlands were delineated in the summer of 2006.

Wetlands: This habitat is defined as poorly drained bottomlands; visible microtopography is present along tributaries. Some emergent wetland areas exist between forested canopies. Species observed in the overstory are compromised of red oak-hickory hardwood trees. Conifers such as white pine and Canadian hemlock are found along the border. Species observed in the shrub layer include alder (*Alnus serrulata*), spicebush, pepper bush, witherod (*Viburnum cassinoides*), swamp holly (*Ilex verticillata*), sweet azalea (*Rhododendron viscosum*), and blueberry. Species observed in the herb layer include clubmoss (*Lycopodium sp*), chain fern (*Woodwardia sp*), rushes (*Juncus spp*), sedges (*Carex spp*), cinnamon fern (*Osmunda cinnamomea*), and interrupted fern (*Osmunda claytonia*). Small clumps of sphagnum (*Sphagnum spp*) and other mosses are occasional.

Project History

On June 2, 2006, the US army Corps of Engineers (Corps) issued a Nationwide Permit 12, Action ID 2006-32495-311, to George and Barbara Pressley for the installation of four subaqueous sewer line crossings on Gashes Creek and unnamed tributaries to provide utility service to the Southcliff subdivision. This application and permit is independent of the proposed development.

On June 7, 2007, Mr. Mike Pierce of MK Properties received verification from the Corps to permanently impact 300 linear feet of jurisdictional stream, temporarily impact 60 linear feet of

stream and permanently impact 0.19 ac. of jurisdictional wetland under Nationwide Permits 12, 29, and 39 (Action ID 2007-00767-311). The purpose of these impacts was to facilitate the development of the 22-acre project site as a residential and commercial subdivision. The NCDWQ issued a 401 Water Quality Certification (DWQ Project # 07-0379) for this project to Mr. Mike Pierce of MK Properties on July 2, 2007. According to the applicant none of this work has been conducted.

Applicant's Stated Purpose

The basic project purpose of the proposed development at Cedar Pointe Crossing is to provide residential housing and commercial real estate. More specifically, the overall project purpose of the proposed development at Cedar Pointe Crossing is to develop a viable, multi-use community, which includes residential and commercial components, within close proximity to a moderately-sized municipality, such as Asheville.

Project Description

The applicant is proposing the development of a multi-use community including single-family homes, commercial real estate, and all associated infrastructure. The applicant proposes to permanently impact 1,775 linear feet of stream channel and 0.01 ac. of wetland to facilitate the development of four commercial out parcels, which occupy the northern portion of the property. Culverts and clean fill material will be placed into stream segments and wetlands on site; subsequent fill material will be placed to provide sufficient high ground for the placement of parking areas and buildings. There are no stream or wetland impacts associated with development of the residential portion of the property. Permanent stream and wetland impacts associated with the development of Cedar Pointe Crossing are listed below.

Site Development Impacts

Stream		Wetland	
Impact	Linear Feet	Impact	Linear Feet
1	920	1	0.01
2	500	Total	0.01
3	355		
Total	1,775		

Proposed Compensatory Mitigation: The applicant proposes to undertake the following mitigation plan to compensate for the proposed impacts.

Preservation: Odin Investments, LLC proposes to partially mitigate for unavoidable impacts at a ratio of 5:1 through preservation of the remaining streams and wetlands on the site. Stream and wetland preservation will total 1,718 linear feet and 0.19 acres, respectively.

NC Ecosystem Enhancement Program (EEP): Odin Investments, LLC proposes to mitigate for the balance of unavoidable impacts at a ratio of 1:1 through payment into the EEP in-lieu fee program. By letter dated May 2, 2008, EEP has indicated they are willing to accept payment for impacts associated with development at Cedar Pointe Crossing.

The table below summarizes the proposed compensatory mitigation for the Cedar Pointe Crossing project.

Proposed Mitigation

Stream	Linear Feet of Mitigation	Type	Mitigation Activity Ratio (x:1)	Total Credit
Uts Gashes Creek	1,718	Preservation	5	344
NCEEP	1,431	Restoration	1	1,431
Total Linear Feet of Mitigation	3,149			
Total Credits				1,775

Other Required Authorizations

This notice and all applicable application materials are being forwarded to the appropriate State agencies for review. The Corps will generally not make a final permit decision until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice in the NCDWQ Central Office in Raleigh serves as application to the NCDWQ for certification. A waiver will be deemed to occur if the NCDWQ fails to act on this request for certification within sixty days of the date of the receipt of this notice in the NCDWQ Central Office. Additional information regarding the Clean Water Act certification may be reviewed at the NCDWQ Central Office, 401 Oversight and Express Permits Unit, 2321 Crabtree Boulevard, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for certification under Section 401 of the Clean Water Act should do so in writing delivered to the North Carolina Division of Water Quality (NCDWQ), 1650 Mail Service Center, Raleigh, North Carolina 27699-1650 Attention: Ms Cyndi Karoly August 1, 2008.

Cultural Resources

A desk review of the National Register of Historic Places records maintained by the State Historic Preservation Office (SHPO) indicates several historic properties in Asheville and Fairview. The majority of these properties are located in downtown Asheville and not in the immediate vicinity of the Cedar Pointe Crossing project area. The Corps has consulted the latest published version of the National Register of Historic Places and is not aware that any registered properties, or properties listed as being eligible for inclusion therein are located within the project area or will

be affected by the proposed work. Presently, unknown archeological, scientific, prehistoric, or historical data may be located within the project area and/or could be affected by the proposed work.

Endangered Species

A preliminary threatened and endangered species survey was prepared by the applicant's consultant ClearWater Environmental Consultants, Inc. (CEC). As part of this survey, CEC has coordinated with the US Fish and Wildlife Service (FWS) and the North Carolina Natural Heritage Program (NHP). In a letter dated March 20, 2007, the FWS concurred with CEC's decision that no listed species or their habitats occur on site. In a letter dated March 6, 2007, the NHP indicated that no record of rare species, significant natural communities, or significant natural heritage areas exist at the site or within a mile of the project site.

The Corps has reviewed the project area, examined all information provided by the applicant and consulted the latest North Carolina Natural Heritage Database. Based on available information, the Corps has determined pursuant to the Endangered Species Act of 1973, that the proposed project will have no effect on federally listed endangered or threatened species or their formally designated critical habitat.

Evaluation

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values (in accordance with Executive Order 11988), land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the discharge of dredged or fill materials in waters of the United States, the evaluation of the impact of the activity on the public interest will include application of the Environmental Protection Agency's 404(b)(1) guidelines.

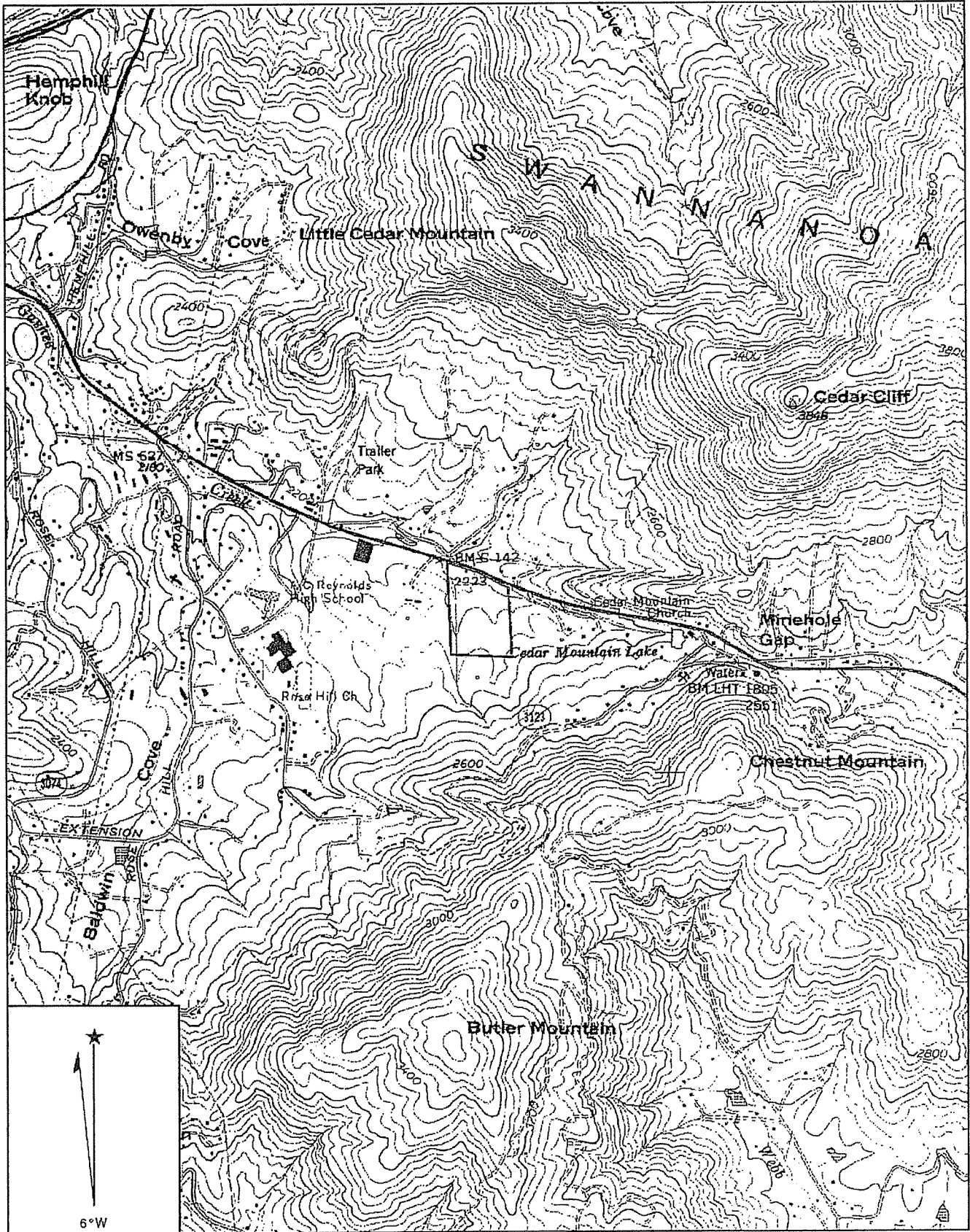
Commenting Information

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidate State Viewpoint or written position of the Governor; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above.

Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing shall be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.

Written comments pertinent to the proposed work, as outlined above, will be received by the Corps of Engineers, Wilmington District, until 5pm, August 1, 2008. Comments should be submitted to Mr. Tom Walker, US Army Corps of Engineers, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, North Carolina 28801-5006, telephone 828-271-7980.

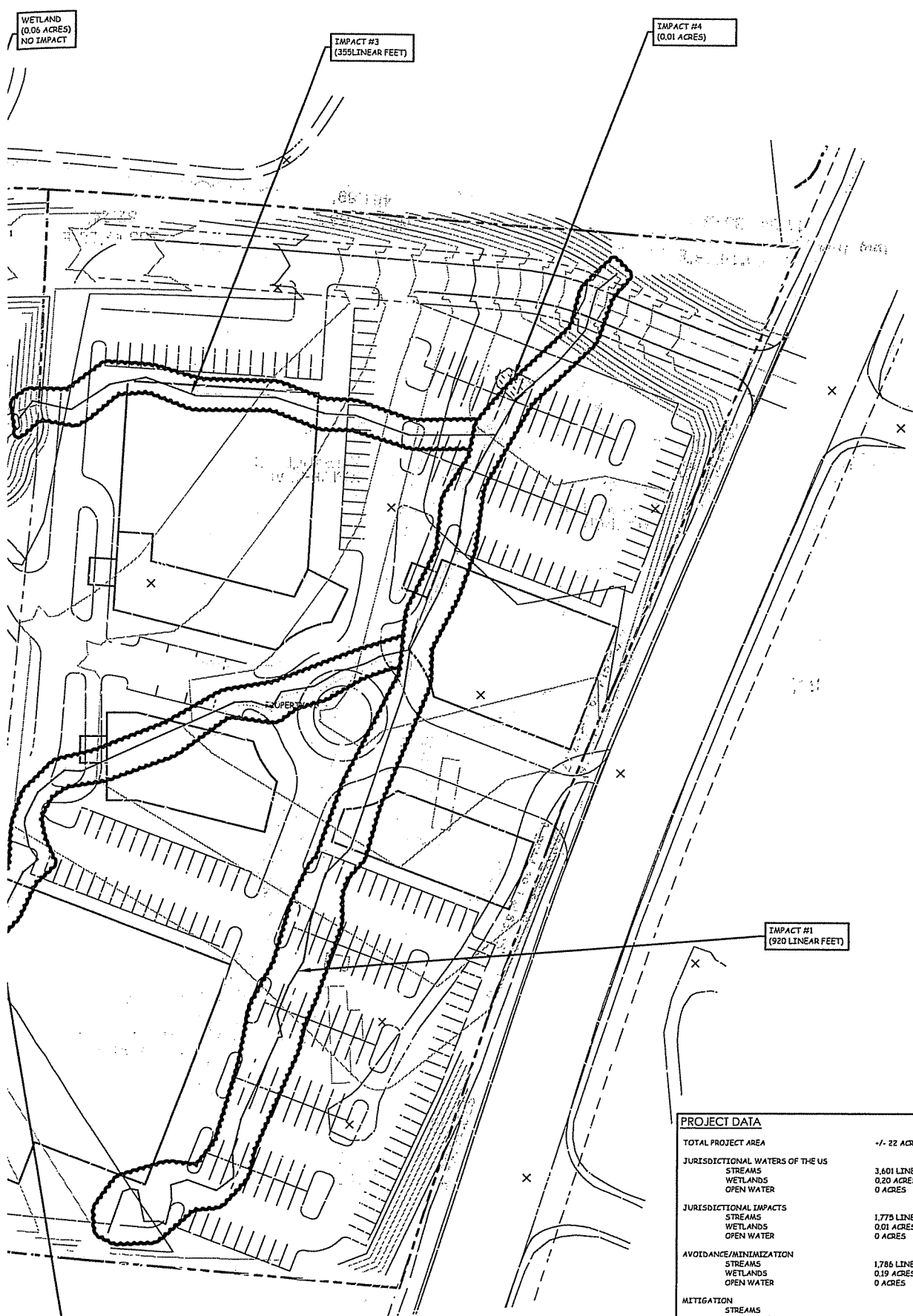


Cedar Point Crossing
Buncombe County
North Carolina

CLEARWATER

Environmental Consultants, Inc.
718 Oakland Street
Hendersonville, NC 28791
828-698-9800

USGS Topographic Map
Oteen Quad



WETLAND
(0.06 ACRES)
NO IMPACT

IMPACT #3
(355 LINEAR FEET)

IMPACT #4
(0.01 ACRES)

IMPACT #1
(920 LINEAR FEET)

IMPACT #2
(500 LINEAR FEET)

LEGEND

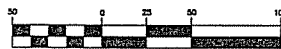
- EXISTING STREAM
- STREAM BUFFER
- EXISTING WETLAND
- PROPERTY BOUNDARY
- STREAM IMPACT AREAS



PROJECT DATA

TOTAL PROJECT AREA	~/- 22 ACRES
JURISDICTIONAL WATERS OF THE US	
STREAMS	3,601 LINEAR FEET
WETLANDS	0.20 ACRES
OPEN WATER	0 ACRES
JURISDICTIONAL IMPACTS	
STREAMS	1,775 LINEAR FEET
WETLANDS	0.01 ACRES
OPEN WATER	0 ACRES
AVOIDANCE/MINIMIZATION	
STREAMS	1,786 LINEAR FEET
WETLANDS	0.19 ACRES
OPEN WATER	0 ACRES
MITIGATION	
STREAMS	
EEP	1,431 LINEAR FEET
PRESERVATION (Total LF)	1,718 LINEAR FEET
WETLANDS	
PRESERVATION	0.19 ACRES
PRESERVATION OF UPLAND BUFFERS	2.35 ACRES

GRAPHIC SCALE



(IN FEET)



BEFORE YOU GO
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IT'S THE LAW!

MIKE ANDERSON ENGINEERING, PA

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NO. DATE DESCRIPTION BY

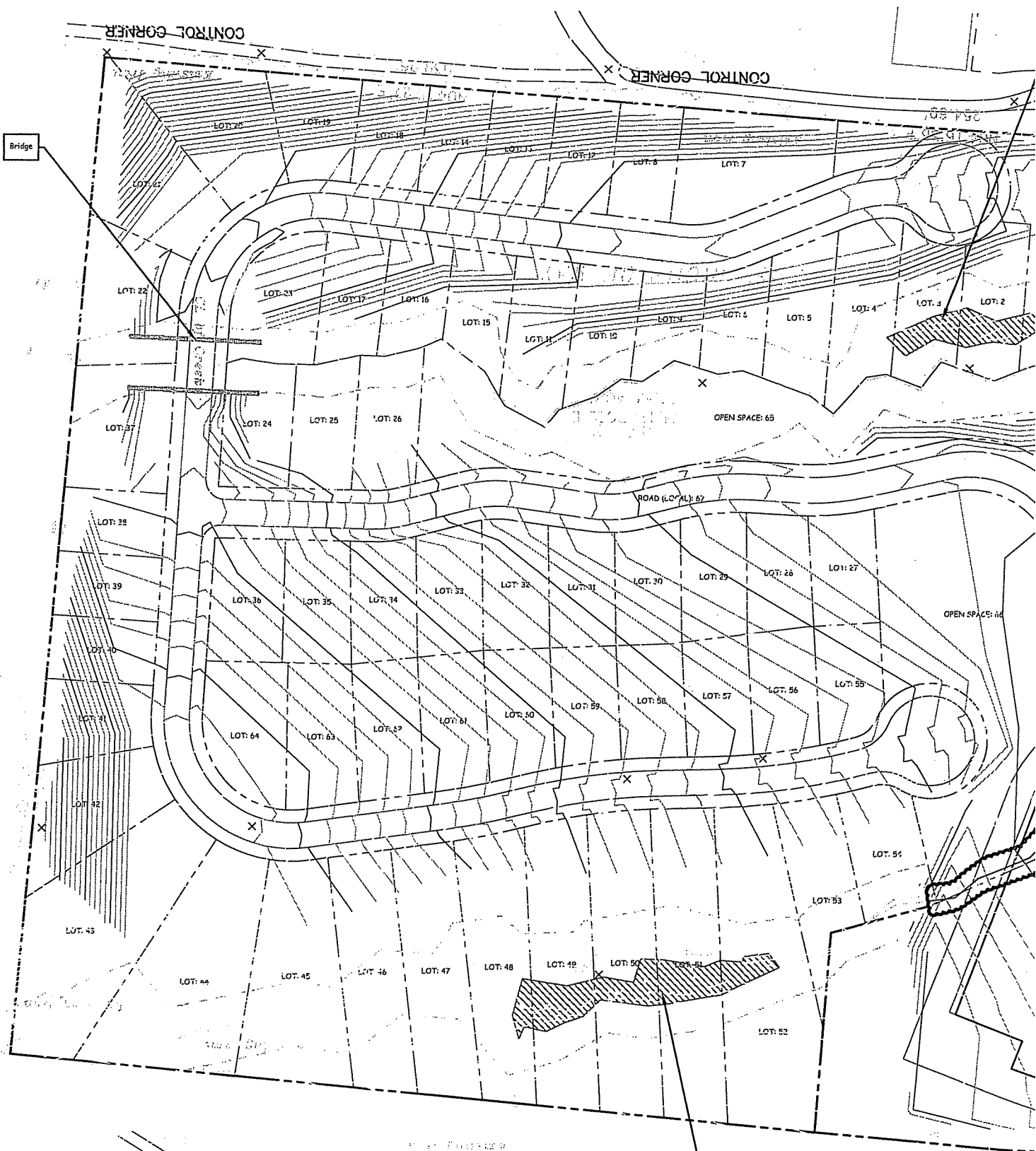
CEDAR POINTE CROSSING
ODIN INVESTMENTS, LLC
BUNCOMBE COUNTY, NC

IMPACT PLAN - FIGURE 4



DRAWN BY:

MTA



WETLAND
(0.13 ACRES)
NO IMPACT